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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 BRIAN CORTLAND,

11 Plaintiff,

12 v.

13 JEFFERY S. and DINA B. MEYERS, et
14 al.,

15 Defendants.

CASE NO. C11-5489BHS

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS

16 This matter comes before the Court on Defendants' motion to dismiss (Dkt. 15).
17 The Court has reviewed the briefs filed in support of and in opposition to the motion and
18 the remainder of the file and hereby grants the motion for the reasons stated herein.

19 **I. BACKGROUND**

20 On June 27, 2011, Plaintiff Brian Cortland ("Cortland") filed an amended
21 complaint against Defendants Jeffrey S. and Dina B. Myers; Law, Lyman, Daniel,
22 Kamerrer & Bogdanovich, P.S. ("Defendants"); and any unknown 1-50 John and Jane
23 Does in the Superior Court for the State of Washington in Thurston County. Dkt. 3,
24 Declaration of John Justice ("Justice Decl."), at 12-20. On June 28, 2011, Defendants
25 removed the action to this Court. Dkt. 1.
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1 On July 13, 2011, Defendants filed a motion to dismiss. Dkt. 8. On August 12,
2 2011, the Court granted Defendants' motion and granted Cortland leave to amend his
3 complaint. Dkt. 12.

4 On August 25, 2011, Cortland filed two Second Amended Complaints. Dkts. 13 &
5 14 ("SAC"). On September 2, 2011, Defendants filed a motion to dismiss. Dkt. 15. On
6 September 22, 2011, Cortland responded. Dkt. 16. On September 30, 2011, Defendants
7 replied. Dkt. 20.

8 **II. DISCUSSION**

9 **A. Standard**

10 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil
11 Procedure may be based on either the lack of a cognizable legal theory or the absence of
12 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901
13 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the
14 complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301
15 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed
16 factual allegations but must provide the grounds for entitlement to relief and not merely a
17 "formulaic recitation" of the elements of a cause of action. *Bell Atlantic Corp. v.*
18 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege "enough facts to state a
19 claim to relief that is plausible on its face." *Id.* at 1974. When deciding a motion to
20 dismiss, the Court's consideration is limited to the pleadings. Fed. R. Civ. P. 12(d).

21 **B. Defendants' Motion**

22 Defendants move to dismiss Cortland's claims for violations of 42 U.S.C. §§ 1983
23 and 1985. Dkt. 8 at 3.

24 **1. Section 1983**

25 Section 1983 is a procedural device for enforcing constitutional provisions and
26 federal statutes; the section does not create or afford substantive rights. *Crumpton v.*
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1 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). In order to state a claim under 42 U.S.C. §
2 1983, plaintiffs must demonstrate that (1) the conduct complained of was committed by a
3 person acting under color of state law and that (2) the conduct deprived a person of a
4 right, privilege, or immunity secured by the Constitution or by the laws of the United
5 States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by*
6 *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate remedy only if
7 both elements are satisfied. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

8 In this case, Defendants argue that Cortland has failed to state a violation of
9 federal law. Dkt. 8 at 3. The Court agrees. First, Cortland’s allegation that Defendants
10 violated the Washington Public Records Act, RCW Chapter 42.56, is not a cognizable
11 legal theory under 42 U.S.C. § 1983.

12 Second, Cortland’s claim that he was denied equal protection of the law under the
13 Fourteenth Amendment is not supported with sufficient allegations that show that he is
14 entitled to relief. To state a claim under the “Equal Protection Clause of the Fourteenth
15 Amendment a plaintiff must show that the defendants acted with an intent or purpose to
16 discriminate against the plaintiff based upon membership in a protected class.” *Barren v.*
17 *Harrington*, 152 F.3d 1193, 1194 (1998). Cortland fails to allege that he was
18 discriminated against based upon membership in a recognized protected class.

19 Third, Cortland fails to state a viable due process claim under the Fourteenth
20 Amendment because he fails to allege that he was deprived of “life, liberty, or property . .
21 . .”

22 Therefore, the Court grants Defendants’ motion to dismiss Cortland’s 42 U.S.C. §
23 1983 claim.
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25 **2. Section 1985**

26 To bring a cause of action successfully under § 1985(3), a plaintiff must allege and
27 prove four elements:
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1 (1) a conspiracy; (2) for the purpose of depriving, either directly or
2 indirectly, any person or class of persons of the equal protection of the laws,
3 or of equal privileges and immunities under the laws; and (3) an act in
4 furtherance of this conspiracy; (4) whereby a person is either injured in his
person or property or deprived of any right or privilege of a citizen of the
United States.

5 *United Brotherhood of Carpenters and Joiners of America v. Scott*, 463 U.S. 825, 828-29,
6 (1983). The second element requires that in addition to identifying a legally protected
7 right, a plaintiff must demonstrate a deprivation of that right motivated by “some racial,
8 or perhaps otherwise class-based, invidiously discriminatory animus behind the
9 conspirators’ action.” *Griffith v. Breckenridge*, 403 U.S. 88, 102 (1971).

10 In this case, Cortland has failed to allege any racial or class-based animus behind
11 the alleged conspiracy. Cortland does argue that he is treated differently than other public
12 record requesters because he must send his requests to Myers. Dkt. 10 at 5-6. This does
13 not meet the standard to establish a claim under Section 1985. Therefore, the Court
14 grants Defendants’ motion on this claim.


15 **C. Relief Requested**

16 Defendants request that the Court dismiss Cortland’s SAC with prejudice. Dkt. 20
17 at 3. A pro se litigant is entitled to notice of the complaint’s deficiencies and an
18 opportunity to amend prior to dismissal of the action. *See Lucas v. Dep’t of Corr.*, 66
19 F.3d 245, 248 (9th Cir.1995). In this case, the Court liberally construed Cortland’s
20 complaints, provided him notice of certain deficiencies, and afforded him an opportunity
21 to cure the deficiencies. Cortland has failed to cure the identified deficiencies.
22 Moreover, Cortland has not alleged a stand-alone state law cause of action and there is no
23 need to remand this matter for further proceedings. Therefore, the Court grants
24 Defendants’ motion and dismisses Cortland’s SAC with prejudice.
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1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that Defendants' motion to dismiss (Dkt. 15) is
3 **GRANTED** and Cortland's SAC is **DISMISSED with prejudice**. The Clerk is directed
4 to enter judgment for Defendants.

5 DATED this 17th day of October, 2011.

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8 BENJAMIN H. SETTLE
9 United States District Judge
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